IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.574 of 2003.

Decided on: April 23, 2007

National Insurance Co. Ltd. …..Appellant.

VERSUS

Anil Kumar & Anr. …..Respondents.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Deepak Bhasin, Advocate.**

For Respondent No.1: **Mr.M.S.Guleria, Advocate.**

For Respondent No.2: **Mr.Lovneesh Kanwar, Advocate.**

Kuldip Singh, Judge (Oral)

This appeal has been filed by Insurance Company respondent No.2 before the Tribunal, against the order dated 11th August, 2003 passed by the learned Motor Accident Claims Tribunal-II, Mandi, H.P. in MAC Petition No.48/2001.

2. The respondent No.1 was the claimant before the learned Tribunal. He filed claim petition on the ground that on 18th November, 2000 he was travelling from Pingla to Baggi in Truck No.HP-31-1735 and was engaged as caretaker of certain marriage articles. The truck met with an accident near Tikar-Kana, Tehsil Sarkaghat, District Mandi. Some other persons were also in the truck. He sustained

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?Yes***

multiple injuries including head injury. He was removed to Hospital at Rewalsar and later on referred to Zonal Hospital, Mandi where he got treatment. On account of serious nature of his injuries, he was referred to Indira Gandhi Medical College, Shimla where he remained indoor patient for about a month and he was still under treatment at the time of filing the petition. According to him, he had spent Rs.20,000/- on treatment. He was serving as private driver and getting Rs.8000/- per month salary. Due to accident he has suffered 100% disability. Now, he is unable to work. The accident has taken place due to rash and negligent driving of the driver of the truck which is owned by Mohan Lal, respondent. The claimant has claimed Rs.10 lacs compensation. He filed separate application under Section 140 of the Motor Vehicles Act (for short 'the Act') claiming no fault liability of Rs.25,000/-.

3. The owner of the truck Mohan Lal filed reply to the main petition. He has, however, admitted that the truck was engaged for bringing marriage articles. He has pleaded that he is not liable to pay the compensation as the truck was insured with the Insurance Company with unlimited liability. The Insurance Company has also filed reply to the main petition and has taken the objection that at the time of accident the person who was driving the truck was not holding a valid and effective driving licence. The truck was being driven in contravention of terms and conditions of the Policy. The Insurance

Company, however, did not deny the accident. The truck No.HP-31-1735 is a goods vehicle. The Insurance Company did not deny that the claimant was travelling in the truck at the time of accident but has taken the plea that he was travelling in the truck as passenger in violation of the terms and conditions of the Policy. In the reply, the Insurance Company has taken other pleas also which are not relevant for decision of the short question involved in the present appeal. The owner and Insurance Company did not file separate replies to the application under Section 140 of the Act. The learned Tribunal vide impugned award has awarded Rs.25,000/- to the claimant under Section 140 of the Act.

4. I have heard the learned counsel for the parties and have also gone through the record.

5. The learned counsel for the appellant / Insurance Company has submitted that the impugned order has been wrongly passed by the learned Tribunal against the Insurance Company. The learned counsel has submitted that in view of the defence put up by the Insurance Company in the main petition, the Insurance Company is not liable to pay any amount under Section 140 of the Act. On the contrary, learned counsel for respondent No.1 / claimant has supported the impugned award. It is the case of the claimant / respondent No.1 that he was travelling in the truck at the time of accident as caretaker of the articles of marriage party. The accident

has not been denied by the Insurance Company. At the stage of the passing of the interim award under Section 140 of the Act, the scope is very limited. In the present case, the basic ingredients for passing the interim award under Section 140 of the Act have been fulfilled and the learned Tribunal has rightly ordered the Insurance Company to pay Rs.25,000/- under Section 140 of the Act as no fault liability. No fault can be found with the impugned order which is upheld.

6. In view of the above discussion, the appeal is dismissed and the impugned order is upheld with no order as to costs. The record of the claim petition be sent to the Tribunal immediately. The Tribunal is directed to decide the case expeditiously and preferably in six months from the date of receipt of record.

(Kuldip Singh)
Judge.

April 23, 2007
(soni)